

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
Civil Action No. 08-3526

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In Regard to the Matter of:

Bayside State Prison
Litigation

JOHN RILEY

AT & SO _____ M
WILLIAM T. WALSH
CLERK
OPINION/REPORT
OF THE
SPECIAL MASTER

-vs-

WILLIAM H. FAUVER, et al,

Defendants.

* * * * *
TUESDAY, NOVEMBER 18, 2008
* * * * *

BEFORE THE HONORABLE JOHN W. BISSELL, SPECIAL MASTER

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2 Transcript of proceedings in the above
3 matter taken by Theresa O. Mastroianni, Certified
4 Court Reporter, license number 30X100085700, and
5 Notary Public of the State of New Jersey at the
6 United States District Court House, One Gerry Plaza,
7 Camden, New Jersey, 08102, commencing at 1:44 PM.
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2 **A P P E A R A N C E S:**

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1 JUDGE BISSELL: I'm now reopening the
2 matter in the case of John Riley, R-I-L-E-Y, docket
3 number 08-3526.

4 This opinion/report is being issued
5 pursuant to the directives of the Order of Reference
6 to a Special Master and the Special Master's
7 Agreement and the guiding principles of law which
8 underlie this decision to be applied to the facts
9 upon which it is based as set forth in the jury
10 instructions in the Walker and Mejias jury charges to
11 the extent applicable to the allegations in Mr.
12 Riley's case.

13 Mr. Riley was housed in Barracks Five
14 on the Farm and at some point shortly after the
15 middle of the month of August, 1997, was awaiting his
16 anticipated parole date of August 27th, 1997. On
17 this occasion, (and I find for the record that it
18 happened sometime between the 15th of August and the
19 27th of August for reasons which I'll elaborate
20 later, but which can't be pinned down more
21 specifically) all of a sudden once again we find the
22 SOGs on the Farm.

23 I continue to be baffled as to why they
24 are there. We've had entries in the records of cases
25 tried before in which it's been indicated that Ms.

1 Pepper who was running the Farm didn't want them
2 there. Now, of course, they completely refused to
3 honor that request on that occasion. As I've also
4 noted before, the Farm unit was the least likely to
5 have generated any part of either the Baker incident
6 or any possible consequences thereof in terms of
7 inmate behavior. It was full minimum, it was a
8 coveted status and many people like Mr. Riley were
9 well on their way toward release either to a halfway
10 house or perhaps a release in toto

11 It is not unduly speculative to
12 conclude that, particularly as this lockdown wore on
13 and maybe indeed the SOG officers became less and
14 less pleased about being there, one or more of their
15 units would take recreational forays into the Farm.
16 And I find that's what happened here.

17 Somewhere around the middle of the
18 lockdown period, perhaps shortly after the 15th of
19 August, matters were adjusted so that the inmates
20 down there could begin taking showers. Mr. Olah, who
21 testified in this case as a witness for Mr. Riley,
22 estimated that that was approximately three weeks
23 after the lockdown began which, once again, is
24 consistent with what I've also concluded.

25 Mr. Riley testified briefly about what

1 occurred to him on this occasion as he was making use
2 of the showers.

3 Beginning at page 12 of the transcript
4 of October 1, 2008.

5 "Question: Now, during that time in
6 August of 1997, did you have an encounter with SOG
7 officers?

8 "Answer: Yes.

9 "Question: And where did that take
10 place?

11 "Answer: In the shower, in the shower
12 room, where the bathroom and shower and everything
13 is.

14 "Question: Do you remember the date or
15 the approximate date of that encounter?

16 "Answer: Approximate date, it was in
17 August, end of July, August. It's been 11 years. It
18 was near the end of the lockdown.

19 "Question: Near the end of the
20 lockdown?

21 "Answer: Yes.

22 "Question: Do you know whether the
23 lockdown at the Farm lasted as long as the lockdown
24 behind the walls?

25 "Answer: No, I don't believe so. I

1 believe the back was still locked down when I got
2 paroled.

3 "Question: The back was still locked
4 down?

5 "Answer: Yeah, I believe, because I
6 remember my mom picked me up at the bus station
7 because they drove me to the bus station. I think
8 she said she tried to get to the back, but they had
9 it blocked off, they wouldn't let her in.

10 "Question: Now, when you say -- this
11 is an expression that you're using, the back, what do
12 you mean by the back?

13 "Answer: Behind the wall. The back of
14 Bayside itself has a wall around it so that's the
15 back and the Farm is in the front."

16 Skipping a little here which isn't
17 particularly important.

18 "Question: All right. So how did it
19 come about that you were in the showers or in the
20 shower at the Farm on this date you were talking
21 about?

22 "Answer: I was in the barracks
23 upstairs and we don't have any cells on the Farm, we
24 have rooms downstairs and you progressively go down
25 as you get more time. I was upstairs. It's a

1 dormitory situation, and the showers are downstairs.
2 So they had us locked down and they had us sitting on
3 our bunks and they started taking one person down at
4 a time or actually two because they have showers on
5 both sides downstairs. So they put me on the one
6 side and one on the other side. So they was taking
7 us down for the showers one at a time and that's how
8 I was down in the shower.

9 "Question: All right. And what
10 happened while you were in the shower?

11 "Answer: I was taking my shower,
12 finishing up, when I heard a noise, commotion. Then
13 SOG came in yelling at everybody, you know. So I
14 pulled the curtain back.

15 "Question: So the SOG came in after
16 you heard some commotion?

17 "Answer: Yeah, they beat the shields
18 down the walls and screaming. Tell everybody to get
19 down, face the wall, don't look at them. So they
20 come in the shower. I was getting out of the shower.
21 They said get down, get down. So I stepped out of
22 the shower and get down and one of the officers
23 grabbed my shoulder, pulled me out of the shower. I
24 was in my flip-flops and the floor is like marble or
25 tile, I guess, and it's slippery. And so he pulled

1 me out. I was slipping and I fell down in a push-up
2 position to stop the fall.

3 "Question: So you went down to the
4 floor?

5 "Answer: Yeah, I went down to the
6 floor fast and I hit in a push-up position and I was
7 looking up."

8 He later described that as looking up
9 by raising his head and crimping the back of his
10 neck, a very customary if not even reflex position
11 for the head if you're falling and then supporting
12 that fall with your arms in a push-up position.

13 I continue now with the quote.

14 "And he pulled me, pulled me out. And
15 then he said don't look at me. And then he took his
16 boot and stomped me in the back of my head, drove my
17 face into the floor, broke my nose. I felt the
18 crunching when the nose broke. And he said keep your
19 face down until I tell you to get up.

20 "Question: All right so you were sort
21 of parallel to the floor on your hands?

22 "Answer: Yes.

23 "Question: Like in a push-up position?

24 "Answer: Yes.

25 "Question: And this is when you got a

1 foot or a boot in the back of your head?

2 "Answer: Yes, sir.

3 "Question: You said he broke your
4 nose?

5 "Answer: Yes.

6 "Question: And how did that happen?

7 "Answer: When he put his boot on my
8 head, like stomping down.

9 "Question: Pushed your head down into
10 the floor?

11 "Answer: Yeah.

12 "Question: I thought I heard you say
13 something about a crunch but, again, I'm having a
14 little trouble hearing.

15 "Answer: Yeah, my nose was broke and I
16 could hear it crunching as the nose broke. And when
17 I hit the ground, you know, the blood started coming
18 out and he's holding me down for a while. Seemed
19 like a long time, but I doubt it was that long, but
20 he was on my head for a while, you know, keep your
21 face down until I tell you to, you know, stuff like
22 that.

23 "Question: All right. Now, after that
24 happened, did you subsequently -- did you get back to
25 where your lodging was after that?

1 "Answer: Yes, after that happened,
2 they was there for a little while and then they left.
3 And they said you can get up now. Officer Young came
4 in.

5 "Question: Who was Officer Young?

6 "Answer: He was the head of the
7 barracks. He was the officer that ran the barracks.
8 He wasn't SOG he was regular DOC and he ran the
9 barracks, Officer Young. So he came in and he said
10 get up and he just looked at me and I looked at him
11 and he just shook his head and I went upstairs.

12 "Question: All right. Now, did you go
13 and seek any medical treatment for your injury?

14 "Answer: Well, I talked to Officer
15 Young about it. I wanted a remedy form and I wanted
16 to have some medical treatment. And he said there
17 was no remedy forms. He said you have to wait. I
18 was going for parole at that time, too."

19 Let us remember, we're dealing here
20 approximately a week, maybe ten days or so before his
21 parole date.

22 Returning to the quote.

23 "So then I asked about medical
24 treatment and he said, well, yeah, I might be able to
25 do something, but if you went there, you're going to

1 cause problems for yourself, you know. If you make
2 waves, John, he said you're going home soon, so they
3 have to fill out the papers too so they know what's
4 going on. He said you're going home in a few weeks.
5 The best thing you can do is keep your mouth shut and
6 get out of here. And when you hit the street, bring
7 it up, which is what I did.

8 The I there referring to Mr. Riley, not
9 the officer.

10 "Question: So you told us, I think,
11 that you were actually physically paroled on the 27th
12 of August.

13 "Answer: 27th of August.

14 "Question: Was that within a week or
15 two of when this happened?

16 "Answer: Right, something like that.
17 Right."

18 I want to continue here on page 18 with
19 the connection with the medical treatment issue
20 because I think that has some importance here also.

21 I then asked him as to whether he
22 sought medical treatment at least as
23 a follow-up while within the prison.

24 And he answered: "See, with medical
25 treatment, too, when you get paroled, you have a

1 physical. If there is anything wrong with you, per
2 se, then they keep you there. Okay? Because you
3 shouldn't be paroled technically if you're hurt in
4 any way. So if you say something, everybody knows
5 you're not going home. And the medical treatment is
6 slow there. It could take six months, seven months
7 to see a specialist. So if you say something, you're
8 not going home for another year. By the time the
9 paperwork is done, another year-and-a-half. And
10 that's a long time when you can go home and see a
11 doctor, go home and take care of whatever you have
12 to."

13 Now, this testimony of Mr. Riley was
14 supported by the witnesses Adams and Olah who were
15 there on the Farm unit with him and also by the
16 testimony of his mother, Mrs. Riley, with regard to
17 the condition that she found him in when he was
18 released. And also how she saw him shortly before
19 his release.

20 Now, in the course of cross-examination
21 and not surprisingly so, Mr. Riley was confronted
22 with the physical assessment describing his physical
23 condition and one taken as a prelude to his release
24 on parole. That assessment, of course, shows
25 absolutely no abnormalities including no problems

1 with his nose or anything wrong with his head or
2 eyes. He testified here that he got black eyes out
3 of his broken nose, not surprisingly.

4 However, that assessment is dated
5 August 15th of 1997 and at some point in this record
6 I had questioned Mr. Riley about whether it was
7 customary if he was being released nearly two weeks
8 later to have had a follow-up physical as a matter of
9 routine and he said no. He said this was it. And I
10 determine, therefore, based upon the preponderance of
11 the credible evidence that the incident that occurred
12 to him in the shower occurred after his physical
13 exam. And accordingly, the condition of his face,
14 his eyes, his nose, et cetera, did not exist when the
15 exam of August 15th took place.

16 No evidence was presented in the course
17 of these hearings to explain in any way whatsoever
18 why the SOG unit was engaged in this foray to the
19 Farm at that time. Mr. Riley's testimony as
20 supported by his fellow witnesses stands virtually or
21 at least materially unrefuted. This is clearly the
22 use of sadistic and excessive force within the
23 contemplation of the jury instructions in our
24 definition of an Eighth Amendment violation of cruel
25 and unusual punishment.

1 In addition, I find that this conduct
2 is so egregious (although not prolonged) as to
3 warrant and support a verdict for punitive damages.
4 The jury instructions on this issue are included,
5 among other things, in the Walker charge delivered on
6 May 21st, 2004 by Judge Kugler. In that definition
7 and it's lengthy, I'm not going to go into it in
8 Loto, although I do incorporate it by reference, it
9 mentions to the jury that if you find that the
10 defendant's conduct was motivated by evil motive or
11 intent or that the defendant engaged in reckless or
12 callus indifferent conduct to the plaintiff's
13 federally protected right to be free from cruel and
14 unusual punishment, you must consider whether or not
15 to award punitive damages to the plaintiff.

16 That's exactly what happened here. The
17 man is ordered to get on the floor, he's pulled and
18 hauled to the floor before he even has the chance,
19 that's bad enough. But when he's falling on the
20 slippery tile floor, coming out of the shower soaking
21 wet in flip-flops which are unstable foot gear,
22 instead of just allowing himself to bounce off the
23 floor with no effort to break his fall, puts his arms
24 out into a push-up position and then is stomped into
25 the floor by the officer in the wake of that, I find

1 it very difficult to think of any conduct that could
2 be considered more evil, reckless or callus.

3 Furthermore, there was absolutely no
4 reason for the imposition of any discipline or the
5 like on Mr. Riley for anything that occurred. And,
6 as with the case of most people on the Farm, he's
7 absolutely no threat to prison security and in his
8 case perhaps even more so because he's ten days to
9 two weeks away from parole. Less than two weeks.

10 The injury to his nose, like any broken
11 nose (and there isn't probably one of us who hasn't
12 had it happened to us at least once) healed over
13 time. He still has some residual problems breathing,
14 as he testified at one point and he now snores more
15 than he used to. But I find that basically as with
16 anything else, the broken nose has healed and doesn't
17 represent a permanent disability. Although painful
18 at first and obviously difficult to deal with, it has
19 eventually rectified itself.

20 To reiterate, there was indeed
21 excessive, unnecessary and sadistic force imposed
22 upon Mr. Riley here by the SOG officer who stomped
23 him in the shower within the contemplation of those
24 legal principles.

25 Furthermore, this level of conduct rose

1 to such an egregious level consistent with the
2 definition of punitive damages in our jury
3 instructions that it does, indeed, support a claim of
4 this plaintiff for punitive damages.

5 As those jury instructions remind us,
6 quantification of punitive damages is not an exact
7 science. Indeed, it's rather inexact. There are a
8 number of considerations set forth in that
9 instruction which I need not elaborate. It involves
10 the exercise of a measure of judgment which I think I
11 can bring to bear here as the fact finder.

12 Finally, although not every item of
13 evidence has been discussed in this opinion/report,
14 all evidence presented to the Special Master was
15 reviewed and considered.

16 And accordingly I recommend in this
17 report that the district court enter an award of
18 eight thousand dollars in compensatory damages and 20
19 thousand dollars in punitive damages in Mr. Riley's
20 favor.

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C E R T I F I C A T E

I, Theresa O. Mastroianni, a Notary Public and Certified Shorthand Reporter of the State of New Jersey, do hereby certify that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place, and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.

Theresa O. Mastroianni
Theresa O. Mastroianni, C.S.R.
Notary Public, State of New Jersey
My Commission Expires May 5, 2010
Certificate No. XI0857
Date: November 18, 2008